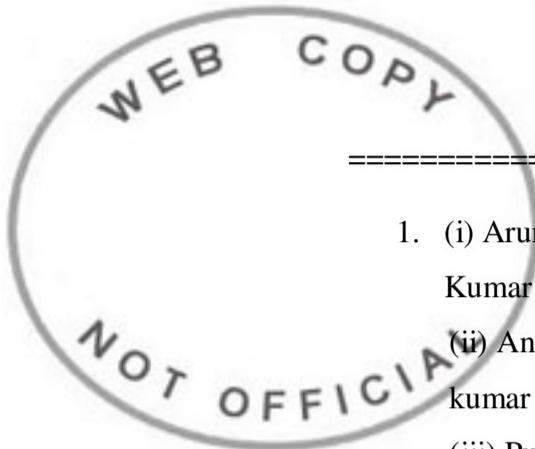


IN THE HIGH COURT OF JUDICATURE AT PATNA



First Appeal No.149 of 1992

1. (i) Aruna Rani, daughter of Late Ram Lagan Prasad, wife of Sri Ashok Kumar Gupta, resident of mohalla Harpur, P.S.- Balia, District- Balia.
(ii) Anita Kumari, daughter of Late Ram Lagan Prasad and wife of Deepak kumar Gupta, Mohalla Bansilal Chauraha, P.S. - Hazaribagh,
(iii) Punam Kumari
(iv) Kiran Kumari,
Both daughters of Late Ram Lagan Prasad, resident of Mohalla Barah Pathar, P.S.- Dehri, District- Rohtas.
2. Meena Devi, wife of Late Sri Krishna Gandhi,
3. Seema Kumari
4. Sita Kumari
5. Gita Kumari, all daughters of Late Krishna Gandhi
6. Shashi Devi daughter of late Krishna Gandhi
7. Arvind kumar
8. Soni alias Ashok Kumar,
Both sons of Late Krishna Gandhi
9. Ajay Kumar
10. Chuni Lal, both sons of Ram Lagan Prasad
11. Arun Kumar
12. Mukesh
Both sons of Late Ram Lagan Prasad
All residents of Muhalla Barah Pather, P.S.- Desri, District- Rohtas.
13. Shanti Devi, ,wife of Radha Prasad, resident of village Pero, P.S.-Pero,
District- Bhojpur.
14. Sarita Kumari, daughter of Krishna Gandhi, resident of village Mohalla Barah Pathar, P.S.- Desri, District- Rohtas.

.... Appellant/s

Versus

1. Asha Gupta, wife of Bhuneshwar Prasad, resident of mohalla Tirkun Dehri, P.S.- Dehri, District- Rohtas.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. SUBHASH CHANDRA DUBEY & Mr K.N.Choubey

For the Respondent/s : Mr. Dhrub Narayan,

Mr. Jitendra Prasad Singh

Mr. Abhishek,

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 13-07-2012

This appeal has been preferred against the judgment and decree dated 28-3-1992 passed by Subordinate Judge I, Sasaram, in T.S. No. 121 of 1988 by which the learned court below has decreed the suit filed by the plaintiffs-respondents and granted the decree for partition of the suit properties as prayed.

2. The relevant facts of the case of the plaintiffs, as unfolded in this appeal, are that Ramdeni Ram was the common ancestor of the parties and he had three sons, namely, Gulabchand Prasad, Rajaram Gupta and Lakhichand Ram Gupta. Most. Bhagmani, widow of Lakhichand Ram Gupta, was plaintiff no.1 in the suit and respondent no.1 in this appeal but her name was expunged after death, and his daughter, Asha Gupta, was plaintiff no.2 in the suit and is now respondent no.2 in this appeal. Rajaram Gupta was defendant no.1 in the suit and is respondent no.3 in this appeal. The descendants of Gulabchand

Prasad were the remaining defendants in the suit and are the appellants in this appeal. According to the plaintiffs, the suit properties mentioned in the Schedules of the plaint are the joint family properties of the descendants of the common ancestor Ramdeni Ram and there has been no partition by metes and bounds in the family although the members of the family are in separate possession of different properties by way of convenience. The plaintiffs have claimed to be in possession of plot no. 1346 with a house constructed by them with the consent of other co-sharers. The dispute arose in the family when the plaintiffs resisted the attempts of the defendants to demolish the ancestral house over plot nos. 1372 and 1374 which led to a proceeding under section 144 Cr.P.C. and ultimately to T.S.No. 100/87 filed by the plaintiff no.2 before Munsif II, Sasaram for grant of a decree of permanent injunction. In that suit, the defendants took the plea of partition in the family and produced forged and fabricated documents of municipality prepared at the instance of the defendant no.1 who is an influential person of the locality and had been Chairman of the Municipality. The suit was wrongly dismissed and the said dismissal was also affirmed in the appeal. The defendants, being emboldened by the dismissal of the suit and appeal have been preparing to make new construction over the two plots viz., plot nos. 1372 and 1374.

3. It has also been stated by the plaintiffs that in another suit filed by the plaintiff no.1 for plot nos. 1372 and 1374 against Suraj Sah and others, the defendant no.1 did not take the plea of partition rather asserted that he was the sole surviving members of the family of Ramdeni Ram and entitled to entire property by inheritance. The plaintiffs have further stated that Lakhichand Ram Gupta resided in the house over plot no. 1346, and the prayer has been made to allot the said plot in the share of the plaintiffs on partition.

WE
NO,

4. Defendant no.1 filed his separate written statement and the case set up by defendant no.1 has also been accepted by the remaining defendants in their separate written statement in the suit. It is the case of the defendants that there had already been partition by metes and bounds among the three brothers and all the three branches are in exclusive possession of their allotted shares. The Plot no.1346 was allotted in the share of Lakhichand Ram Gupta, who continued in possession over the same during his life time and after his death his widow , plaintiff no.1, came in possession. It is also the case of the defendants that plaintiff no.2 (daughter of Lakhichand Ram Gupta) has never come in possession of the property allotted to Lakhichand Ram Gupta and she resides at Bokaro with her husband and children. The defendants' case is also that the three sons of Ramdeni Ram accepted the partition amongst them and had accordingly filed petitions for mutation in the Anchal for mutation of the land allotted to their respective shares which were allowed. The defendants have asserted that the earlier suits had been rightly dismissed and there is no unity of title and jointness of possession in between the parties with regard to the suit properties and as such the suit is fit to be dismissed.

5. The learned court below in view of the pleadings of the parties framed issues and the material issues were Issue Nos. 3 and 4 which are as follows:

Issue no.3: Whether there is unity of title and jointness of possession between the plaintiffs and the defendants over the suit properties described in Schedule -Ka of the plaint?

Issue no.4: Whether the plaintiffs are entitled for partition of their 1/3 rd share in the suit property described in Schedule-Ka of the plaint and for delivery of possession?

WE
NO,

6. The learned court below after scrutinizing the evidence of the parties has decided the aforesaid two issues in favour of the plaintiffs by holding that there has been no partition by metes and bounds of the suit properties in between the three sons of Ramdeni Ram, namely, Gulabchand Prasad, Rajaram Gupta and Lakhichand Ram Gupta and there is unity of title and jointness of possession between the parties over the suit properties described in Schedule-Ka of the plaint. It has also been held that the plaintiffs are entitled to have partition of their 1/3rd share in the suit properties and separate possession over the same.

7. Mr. K. N. Choubey, the learned senior counsel appearing on behalf of the appellants, has submitted that there had been partition by metes and bounds between three sons of Ramdeni Ram in April 1967 and this fact is amply established by the depositions of the witnesses and the documentary evidence adduced by the defendants. It has been contended that from the evidence at Ext. G series, Ext. F series and Ext. K series, it would appear that after partition the three brothers separately applied for mutation of their names in the revenue records as well as the municipal records over the properties allotted to their shares, and the striking fact in the documentary evidence at Ext.F series, which are the applications filed by the three brothers, is that in each of the applications all the three brothers had put their signatures after acknowledging the fact of partition in between them. The learned senior counsel has further emphasized that these documents are not the applications for mutation simpliciter but reflect the partition by metes and bounds. It has been further propounded that admittedly the plaintiffs, who are the heirs of Lakhichand Ram Gupta are in exclusive possession of the house in plot no. 1376 which admittedly has been constructed by them and in the revenue

records also the said house has been exclusively recorded in the name of Lakhichand Ram Gupta leading to the inevitable conclusion that the same had been allotted to him in partition by metes and bounds. Elaborating his submission, the learned counsel has pointed out that the plaintiff no.2 herself filed Title Eviction Suit no. 8 of 1991 for eviction of the tenant from the house in plot no. 1346 which fact is not in consonance with the case of jointness as pleaded by the plaintiffs. Criticising the impugned judgment the learned senior counsel has submitted that the learned court below has misread and misinterpreted the oral and documentary evidence and reached to wrong conclusions.

8. Mr. Dhrub Narain, the learned senior counsel appearing on behalf of the plaintiff-respondents, on the other hand, has submitted that there is strong presumption under Hindu law regarding jointness amongst the brothers, and a heavy burden lies on the person who contradicts the said fact to plead and prove the previous partition. It has been contended that living separately by convenience and enjoyment of separate properties by the members cannot be the proof of partition by metes and bounds and in similar manner even separate mutations in the revenue records and municipal records also cannot be the conclusive proof of partition by metes and bounds. It has been pointed out by the learned senior counsel that it is the plaintiffs' specific case that the branches of three brothers are living separately and are in possession of the different suit houses by convenience, but the defendants, who have come out with the case of partition of the suit properties by metes and bounds are to establish that the family properties in separate possession of the members of the family are in fact the properties allotted to them in partition by metes and bounds. It has been further submitted that admittedly the suit properties

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NO,

consist of five separate houses at different Mohallas of Dehri town and the improbability of the story of partition by metes and bounds as pleaded by the defendants is manifest when Lakhichand Ram Gupta is said to have been allotted only one house out of five houses and there is no further pleading by the defendants to justify the said allotment either on facts or on equity. It has also been urged that the plaintiffs have denied the signature of Lakhichand Ram Gupta on the alleged application for mutation but there was no prayer by the defendants to get the said handwriting examined by a handwriting expert to establish the genuineness of the signature. Lastly, it has also been argued that the documentary evidence(Ext G series, Ext. K series and Ext. F series) are not reliable documents, and in any view of the matter they cannot be the evidence to establish the partition by metes and bounds of the suit properties.

9. In view of the rival contentions on behalf of the parties, the points for consideration in this appeal are as to whether the case of previous partition amongst the three brothers as pleaded by the defendants is established by evidence and whether the court below has reached to a right conclusion on the basis of scrutiny of the evidence in discarding the said case of previous partition?

10. For convenience both the points are being taken up together for consideration. It is not in dispute between the parties that Ramdeni Ram had three sons and the parties to the suit are his descendants. The plaintiffs' case is that there has been no partition of the suit properties between the three sons or the descendants of Ramdeni Ram although they are living separately in separate possession of the family properties by convenience. However, it is the case of the defendants that after the death of Ramdeni Ram his three sons started living separately and later on in April 1967 all the joint family

properties were partitioned amongst them by metes and bounds. In view of the well-settled principle the burden of proof to prove partition of the suit properties by metes and bounds is squarely upon the defendants in view of the presumption of joint status of the descendants of Ramdeni Ram.

11. There are altogether five houses as mentioned in Schedule-Ka of the plaint. It is not disputed that they belong to the family of Ramdeni Ram. The plaintiffs are in possession of one house in Plot no.1346 whereas the defendants are in possession of the remaining four houses. It has been argued on behalf of the defendants that the house at Plot No. 1346 had been allotted to Lakhichand Ram Gupta, and the exclusive possession of the plaintiffs with the facts evidencing exercise of ownership by them are itself sufficient corroboration of the fact of previous partition by metes and bounds. However, the well settled principle, in this regard requires no repetition that the separate possession over the family properties by different members of the family is not ipso facto evidence of partition by metes and bounds which is still required to be established by other evidence as well. It must be established that the unity of title and jointness of possession over the family properties vesting in all the members have been disrupted and transformed into several and individual ownership and possession either by a decree of a court or through instrument or by amicable agreement amongst the family members.

12 The documentary evidence marked as Ext. F series, Ext. G series and Ext. K series have been strongly relied upon on behalf of the appellants to establish the partition by metes and bounds in the family. Ext. F series consist of five applications for mutation which have been marked as Exts. F, F/1, F/2, F/3 and F/4. All these five applications for mutation had been filed on 12-4-1967 before the Anchal Adhikari, Dehri, and out of them Exts. F/1 and Ext.

F/3 are the applications purported to have been filed by Rajaram Gupta for mutation of his name over Plot nos. 1374 and 1372 respectively. The applications for mutation for Plot no.448 and Plot no.1209 in the name of Gulabchand Prasad have been marked as Ext.F and Ext.F/2. The application for mutation in the name of Lakhichand Ram Gupta for Plot no.1346 is Ext.F/4. The perusal of the contents of these applications reveals that they have been made by the respective applicant stating therein that after the death of his father it has fallen to his share, but in the application(Ext.F/4) in the name of Lakhichand Ram Gupta it has been stated the land had fallen to his share after the death of his mother. It is worth noting that nothing has been stated in this application regarding partition of the joint family property along with the prayer for mutation and the parentage of the applicant Lakhichand Ram Gupta has also not been mentioned. It is also apparent that the statement regarding the partition has been entered down below in the application and not in the column provided in the application. Although all the five applications bear the signature of the three brothers, but very peculiarly the application said to have been filed by Lakhichand Ram Gupta does not bear his signature as the applicant rather his signature is below the signature of Gulabchand Prasad. The five applications appear to have been filed on 12-4-1967 but on the application at Ext.F/2 the stamp bears the date 15-4-1967 and on the applications at Exts. F, F/1 and F/3 the stamps bear the date 17-4-1967, but remarkably the application in the name of Lakhichand Ram Gupta at Ext.F/4 does not appear any stamp. It further appears from the documents at Ext.G series which are the reports of the Tehshildar(Karamchari) on all the above five applications for mutation respectively, that the reports had been submitted on the same day i.e., 12-4-1967. Significantly these reports by the Karamchari

did not mention the partition between the sons of Ramdeni Ram and the recommendation for mutation had been made only on the basis of heirship. Ext.K series is the order for mutation passed by the Circle Officer on the basis of the applications(Ext.F series) and the reports(Ext.G series). The order in all the mutation cases had been passed on the same day i.e., 10-5-1967 and it has not been mentioned in the order of the Circle Officer that the mutation had allowed on the plot/s on the basis of possession of the applicant by virtue of partition in the family, and the basis for order of mutation has been mentioned as succession

13 The submission of the learned senior counsel appearing on behalf of the appellants is that the fact of partition is mentioned in all the applications(Ext.F series) and the three brothers accepting the partition had prayed for mutation and as such no more evidence is required in this regard. However, the placement of the statement regarding partition down below and beyond the column meant for stating 'particulars of mutation' in the proforma of the mutation applications, and non-mention of this fact either in the reports of the Karamchari(Ext. G series) or in the orders of the Circle Officer(Ext. K series) are the factors which give credence to the submission on behalf of the plaintiff-respondents that this statement had been later on entered into the applications for mutation. Further, there is also no explanation as to what had prompted making the statements at two places in the same application when in normal course it could have been made in continuity. If the remaining two brothers intended to express their no objection to the prayer for mutation by their one brother, that could have been expressed differently with the signatures of only the said two brothers at one place. The contents of the application (Ext.F/4) said to have been filed by Lakhichand Ram Gupta

without stating the parentage, the placement of the signature of Lakhichand Ram Gupta said to be the applicant down below the signature of Gulabchand Prasad and absence of any stamp on the application cast doubt upon the veracity of the said document.

14. On behalf of the defendants the D.W.15, Chand Keshwar Roy, who was the Karamchari of the concerned revenue Anchal has been examined in support of the validity of the mutation proceeding. He has stated in his deposition that all the three brothers had filed the applications in his presence for mutation according to partition. He has also stated that the applications had been written in his presence. He has accepted that on the same day he was directed by Anchal Adhikari to make local inspection, and the report was also submitted by him on the same day, but he has also accepted that the report submitted by him was also required to be verified by the Circle Inspector, which was not done. This witness has no where stated that he found the fact of partition to be true during his inspection and mentioned the said fact in his report. In view of the aforesaid facts and discussions, it is held that the entire process of mutation right from the filing of applications upto the passing of the order is not above suspicion and cannot be accepted as reflection of the true state of affairs. These documents cannot be made the basis for holding that there had been partition by metes and bounds wherein Lakhichand Ram Gupta, the predecessor of the plaintiffs, had participated. The learned court below has rightly discarded these documents as basis for proving partition by metes and bounds as propounded by the defendants. The documents marked as Ext.A series, Ext.B series and Ext.D series have been filed by the defendants for establishing that in the concerned municipality also the assessment of tax has been done separately in the name of three brothers for separate holding in their

possession and they have been paying separate taxes and on this basis it has been submitted that there had been partition by metes and bounds. As already said, separate mutation or separate payment of rent or taxes are not the factors sufficient to establish partition by metes and bounds in the family and utmost they can be proof of separate possession. No other documentary evidence has been relied upon on behalf of the defendant-appellants in support of partition

15 The plaintiffs have adduced Ext.2, which is a copy of the plaint of T.S.No. 95 of 1980 filed by defendant no.1 for declaration of his title over the wall mentioned in detail in the Schedule of the plaint of the suit and for permanent injunction against the defendants of that suit from demolishing the said wall. The said suit was with regard to the wall of the house in plot no. 1374(one of the suit properties). In the plaint, the defendant no.1 as plaintiff of that suit had stated that he was the sole surviving member of the family of Ramdeni Ram and the rest of the branches had become extinct. In the Schedule he also gave the genealogy of the family of Ramdeni Ram which included Ramdeni Ram and his sons wherein the branches of his two brothers, namely, Gulabchand Prasad and Lakhichand Ram Gupta have been shown to have become extinct. On the basis of this document(Ext.2) the learned senior counsel appearing on behalf of the plaintiff-respondents has submitted that instead of claiming his title over the suit plot in that suit as sole surviving member of the family, defendant no.1 could have very well stated the facts regarding partition and allotment of the said plot exclusively to him and such a plea demonstrates the malafide intention of defendant no.1 to grab the family property or at least can be a material evidence to indicate that his story of partition by metes and bounds is false The contention of the learned senior counsel is not without substance, but will have to be considered along with

other evidence.

16. The defendant no.1 has been examined as D.W.24 in the suit. In his deposition he has stated that the partition was done in the month of April 1967, but has further stated that there was no Panch (arbitrator) appointed for the partition and the partition was done without fixing the valuation or in accordance with the area of the houses. He has also stated that no document of partition was written. He has not given any explanation to his statement made in Ext.2 for his claim for being the sole surviving member of the family of Ramdeni Ram and has simply denied to have made such statement. From his deposition it appears that he has not disclosed the basis for partition of the five houses of the joint family and this fact only supports the version of the plaintiffs that the family members are separate by convenience and there was no partition by metes and bounds, as he has further accepted that Lakhichand Ram Gupta was allotted only one house whereas the two other brothers were allotted two houses each but disclosed no basis for such allotment. D.W.14 Ramlagan Prasad is the son of another brother Gulabchand Prasad. In his deposition he has stated that the partition was done in his presence and has further also accepted that the partition was not done by fixing the valuation of the property. He has also stated that at the time of partition there were two shops of sweets, but there was no partition of the goods or stocks of the shops and no accounts were taken. He has also significantly stated that his father died in the year 1975 and till his life time he(father) used to pay the rent of the four houses. This statement by him shows that no partition by metes and bounds had been done till 1975. Other witnesses examined on behalf of the defendants have only supported the story of partition of the defendants but denied to be witnesses of the said partition or having first hand knowledge of the same.

Thus, the oral evidence on behalf of the defendants are also far from being satisfactory to sustain the case of partition by metes and bounds of the suit properties. It is, thus, held that the defendants have failed to establish the case of previous partition by metes and bounds for the family properties.

17. The learned court below has properly scanned the evidence of the parties and has rightly reached to the conclusion that the defendants have failed to establish the fact of partition by metes and bounds of the suit properties amongst the three sons of Ramdeni Ram or their descendants. The two points, formulated for determination in this appeal, are accordingly decided against the appellant.

17. In the result, this appeal is dismissed and the impugned judgment and decree passed by the learned court below is, accordingly, upheld. In the facts and circumstances, however, there shall be no order as to costs.

(V. Nath, J)

B.Roy/-